

1 SIPPEL LAW FIRM PLLC
707 East Beale Street
2 Kingman, AZ 86401
928-753-2889
3 email sippelstaff@frontier.com
Mark A. Sippel Bar ID 00550
4 Attorneys for Debtor

5 UNITED STATES BANKRUPTCY COURT DISTRICT OF ARIZONA

6
7 *In re:*

8 GARY GILLIN
ANDREA GILLIN
9 Debtor

No. 0:13-BK-21897

Chapter BK 13

10 GARY GILLIN
ANDREA GILLIN
11 Movant,

12 vs.

13 PARTNERS FOR PAYMENT RELIEF DE
II LLC
14 Respondents.

ADV NO. 0:14-ap-00806-PS

COMPLAINT TO DETERMINE THE
VALIDITY, PRIORITY OR EXTENT
OF A LIEN OR OTHER INTEREST
IN PROPERTY

15 Debtor and Plaintiffs in the above captioned matter, for their Complaint to Determine the
16 Validity, Priority or Extent of a Lien or Other Interest in Property allege:

17 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; 11 U.S.C.
18 § 506(a), 11 U.S.C. § 1123(b)(5) and Rule 7001 et seq. Rules of Bankruptcy Procedure. This is a
19 core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), 157(b)(2)(B) and 157(b)(2)(K).

20 2. Plaintiffs reside in Mohave County, Arizona and are the Debtors in the above
21 captioned Chapter 13 proceeding.

22 3. Defendant, PARTNERS FOR PAYMENT RELIEF DE II LLC (hereafter "Partners")
23 upon information and belief, is licensed to make, issue, write or otherwise purchase and acquire
24 residential mortgage loans in the state of Arizona.

25 4. Plaintiffs, at the time of filing of the case, were the owners of certain real property
26 located at 2227 LUCILLE AVE, KINGMAN AZ 86401 (the "Property") with a legal description

as follows:

LOTS TWENTY NINE (29) THROUGH THIRTY-TWO (32), INCLUSIVE, BLOCK 130, GOLDEN GATE ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED JANUARY 13, 1930, IN THE OFFICE OF THE RECORDER OF MOHAVE COUNTY, ARIZONA. APN: 311-14-101A

5. The Plaintiffs believe that the property is worth somewhere between \$49,965.00 and \$87,993.00 based on the Mohave County Assessor valuation, attached as **Exhibit "A"**, and direct knowledge of the Kingman Market, AND based on the Analysis by Zillow, copy attached hereto as **Exhibit "B"**.

6. The property is subject to a first mortgage lien of NATION STAR MORTGAGE, CLAIM ## 8 FOR \$165,702.03, which grossly exceeds the home value.

7. A copy of the Deed of Trust in favor of the First Lender which was recorded with Mohave County Recorder is attached hereto as **Exhibit "C"**.

8. The Property is also subject to a second mortgage lien of in favor of Defendant PARTNERS FOR PAYMENT RELIEF DE II LLC per the Proof of Claim 9.

9. A copy of the Deed of Trust in favor of the Second lender and any assignments which was recorded with the Mohave County Recorder is attached as **Exhibit "D"**.

10. Plaintiffs assert that after applying the first mortgage lien of the current first mortgage beneficiary there is no equity remaining for Partners's second mortgage lien to attach to.

11. Plaintiffs assert that pursuant to 11 U.S.C. §§506(a)(1) and 506(d), Partners's claim is entirely unsecured and its lien (Deed of Trust) upon the Debtor's real property is void.

12. Counsel has had numerous phone conferences with Partners's agent as to the valuation of the property and with emails, copy attached as **Exhibit "E"**.

13. Partners or its agents even tried a notice of eviction claiming the home foreclosure was completed, copy attached as **Exhibit "F"**.

14. Notwithstanding the public record availability of the Assessor valuation, the widely publicized real estate devaluation, and the provided information, Partners filed both a proof of claim and an objection to the Plan which made alternative relief provision should this case not prevail, causing Plaintiffs to incur additional sums for attorney's fees.

15. This matter arises out of a lending contract, and pursuant to the contracts and the Arizona State law, A.R.S. § 12-341.01, the prevailing party is entitled to an award of attorney's fees.

16. Further, A.R.S. § 12-1101 and following give a potential for relief to sue Partners and obtain both legal fees and a quiet title judgment against them on if the Lien is not released.

17. Demand was duly made upon Partners and its agents, demanding that the property and all interest of Partners be Disclaimed and lien be released pursuant to **Exhibit G**.

18. By failing to release the Lien, Plaintiffs have further grounds for an award of Costs and Attorney's fees to be set by this Court; A.R.S. § 12-1103.

19. Plaintiffs further allege that the allegations herein establish a cause of action under the F.D.C.P, 15 U.S.C. § 1692–1692p for outrage, pursuing a claim without justification, employing agents without the protections and warnings required, and thus justifying an award of punitive damages and relief to the fullest extent of the law.

WHEREFORE, Plaintiffs pray that this Honorable Court find in favor of the Plaintiff and Order the following:

A. That there is insufficient equity in the subject real property for the Partners's second mortgage lien to attach to.

B. That the Partners's second mortgage lien is entirely unsecured.

C. That upon Completion of the Chapter 13 payments, and a entry of discharge, that the Lien is removed.

D. That the Order of this Court may be recorded and the same shall have the effect of voiding the lien on the public records.

E. That the Partners's claim and proof of claim be deemed an unsecured claim to be paid according to the Chapter 13 Plan.

F. That Partner's agents and assigns failed to disclaim the property within 30 days, and as such are liable to Plaintiffs as a separate legal theory for legal fees pursuant to A.R.S. § 12-1103.

G. That Plaintiffs' counsel be awarded his costs and attorney's fees.

H. That if the matter proceeds by Default, Counsel should be awarded Judgment for his legal fees of 4,500.00 plus costs as established.

I. That Plaintiffs recovers any additional relief that this Court deems justified and appropriate, given the circumstances.

September 24, 2014

/S/ MARK A. SIPPEL, AZ BAR ID 005506
Attorneys for Debtors

Complaint to Determine Validity of Lien mailed
first class mail this date: September 24, 2014 to:

Partners for Payment Relief DE II LLC
3748 W CHESTER PIKE STE 103
NEWTON SQUARE PA 19073-3252

RUSSELL A. BROWN
3838 N CENTRAL AVE STE 800
PHOENIX AZ 85012

Partners for Payment Relief DE II LLC
C/O STAT AGENT
ATA CORPORATE SERVICES LLC
222 DELAWARE AVE STE 1200
WILMINGTON DE 19801

GARY GILLIN
ANDREA GILLIN
2227 LUCILLE AVE
KINGMAN AZ 86401

ATLANTIC HOME REALTY L.C.
610 LAUREL ST
ATLANTIC IOWA 50022

OCULUS REALTY LLC
333 MAIN ST 2ND FLOOR
GAITHERSBURG MD 20878

SAFEPOINT FORECLOSURE SERVICES
10151 DEERWOOD PARK BLVD
BUILDING 200 STE 250
JACKSONVILLE FL 32256

INFORMATION544@HAR.COM

PRIORITY POSTINGS AND PUBLICATIONS
1750 IRVINE BLVD STE 1
TUSTIN CA 92780

PRIORITY POSTING & PUBLICATIONS
2562 WALDEN AVE STE 103
BUFFALO NY 14225-4758

by /s/ Secretary to Mr. Sippel

1
2 **VERIFICATION**

3 GARY GILLIN and ANDREA GILLIN, each being duly sworn, depose, state, and verify
4 that the above allegations are true and correct under penalty of perjury.

5
6 
ANDREA GILLIN

7
8 STATE OF ARIZONA }
County of Mohave

9 SUBSCRIBED and sworn to this 24th day of September, 2014 by the above persons who
10 personally appeared in front of me, and satisfactorily established their identity to me and authority
11 to execute this Document.



11
12 
Notary Public

